

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.302
IA/260(MP)2022
in
CP(IB)/22(MP)2021

Proceedings under Section 33(1) of IBC r.w. Rule 11

IN THE MATTER OF:

Kamal Agarwal, RP
V/s
Volkswagen Finance Pvt Ltd & Ors

.....Applicant

.....Respondents

Order delivered on 20/01/2023

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

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**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

Braj Mohan

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**DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)**

BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

IA/260(MP)2022
IN
CP(IB)/22(MP)2021

(Application under section 33 of the Insolvency and Bankruptcy Code, 2016)

Through:

Mr. Kamal Agarwal

Resolution Professional of:
M/s Shirani Automotive Private Limited
Address:
487/27, School Road,
Near Peeragarhi Metro Station,
New Delhi- 110087

.....Applicant

Versus

Volkswagen Finance Private Limited
(Sole Member of Committee of Creditors)
Address:
3rd Floor Wing-A, Silver Utopia,
Cardinal Gracious Road,
Chakala, Andheri East,
Mumbai,
Maharashtra- 400099

.....Non-Applicant no. 1

Mr. Yahaya Khan

(Suspended Director of the Corporate Debtor)
Address:
K20/2 Kasudia Mori, A.B. Road Dewas Naka,
Indore,
Madhya Pradesh- 452010

.....Non-Applicant no. 2

Mr. Ghulam Gaus Khan Shirani

(Suspended Director of the Corporate Debtor)
K20/2 Kasudia Mori, A.B. Road Dewas Naka,
Indore,

Madhya Pradesh- 452010

.....**Non-Applicant no. 3**

In the matter of:

(Application under section 10 of the Insolvency and Bankruptcy Code, 2016)

Shirani Automotive Private Limited

.....**Corporate Debtor**

Order Reserved On: 06.01.2023
Order Pronounced On: 20.01.2023

Coram: Dr. Madan B. Gosavi, Member (J)
Kaushalendra Kumar Singh, Member (T)

Appearance:

For the Applicant: Ld. PCS Mr. Pratik Tripathi

For the IRP/RP: Ld. Mr. Kamal Agarwal

For the Respondent: Ld. Adv. Ms. Deepika Rathi (R-1)

ORDER

1. This application is filed by Mr. Kamal Agarwal, resolution professional of M/s Shirani Automotive Private Limited (Corporate Debtor) under section 33(1) of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating the liquidation process of the corporate debtor.

2. The submissions made by the applicant in its application are summarized hereunder:

- (i) The corporate applicant filed an application under section 10 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) for M/s Shirani Automotive Private Limited, which was admitted by this Adjudicating Authority vide order dated 23.12.2021. Mr. Ashutosh Gokhale was appointed as the interim

resolution professional (IRP) of the corporate debtor. The IRP constituted the COC having sole member i.e., M/s Volkswagen Finance Private Limited having 100% voting rights. The COC in its 2nd meeting resolved to replace the IRP and proposed the name of the applicant herein to be appointed as a resolution professional (RP). Accordingly, the Adjudicating Authority vide order dated 07.04.2022 in IA/28(MP)2022 replaced the IRP by appointing Mr. Kamal Agarwal as RP of the corporate debtor.

(ii) In the absence of cooperation from the suspended management, a show-cause notice was issued in IA/119(MP)2022 filed under section 19(2) of the Code. Further, an extension of 90 days was allowed by this Adjudicating Authority in IA/125(MP)2022.

(iii) In view of the above-mentioned show-cause notice an exclusion application praying for an exclusion of 104 days was also filed in IA/222(MP)2022. However, upon disposal of IA/119(MP)2022, the applicant submitted that IA/222(MP)2022 has become infructuous, and since, the maximum period of 330 days was expired with no resolution plan, hence this application for initiation of the liquidation process is presented before this Adjudicating Authority.

(iv) The COC in its 4th meeting dated 21.12.2022, in accordance with Regulation 39B and 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016, resolved with 100% votes liquidation cost of Rs 3,00,000/- including liquidators fee of Rs 2,00,000/- for the entire liquidation process. As there are no liquid assets available with the corporate debtor, the liquidation cost will be borne by the COC. The COC also resolved to appoint Mr. Mohd. Raees Sheikh as a liquidator in place of the resolution

professional. The proposed liquidator has provided his written consent and the same is placed on record.

(v) The COC in the same meeting, in accordance with Regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016, resolved not to sale the corporate debtor as a going concern.

3. We heard the learned resolution professional and perused the relevant material available on record. It is noted that the corporate debtor was admitted into CIRP vide order dated 23.12.2021. Form-G dated 05.10.2022 was published by the resolution professional and the last date of receipt of the expression of interest was 20.10.2022. No resolution plan was received by the resolution professional. The maximum period for completion of CIRP i.e., 330 days already expired on 18.11.2022. Further, the COC in its 4th meeting dated 21.12.2022 has passed a resolution to the effect of liquidation cost and proposed to pay Rs 3,00,000/- as liquidation cost which shall be borne by M/s Volkswagen Finance Private Limited. Further, resolutions in accordance with Regulation 39B, 39C, and 39D are also passed in the said meeting. Before passing the final order we put on record the fact that, the corporate debtor itself has filed an application under section 10 of the Code declaring itself to be insolvent but when CIRP was commenced, the suspended board of directors of the corporate debtor did not cooperate the resolution professional by providing the required information. It raises some concern as to why the application under section 10 of the Code itself was filed. What was the reason, if the suspended management was not interested to resolve the insolvency of the corporate debtor. We request IBBI to look into and inquire into the matter.

We proceed to pass the following order:

ORDER

I. The corporate debtor M/s Shirani Automotive Private Limited shall be put to liquidation in terms of the provisions of section 33(1) of the Code r.w. Regulations made thereunder which shall be effective from the date of this order. Accordingly, we allow IA/260(MP)2022.

II. The moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of the liquidation.

III. As per section 34(1) of the Code, Mr. Mohd. Raees Sheikh having registration no. IBBI/IPA-002/IP-N00957/2020-2021/13094 is hereby appointed as a liquidator of the corporate debtor, M/s Shirani Automotive Private Limited, who shall complete the liquidation process as per the provisions of the Code r.w. Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

IV. All the powers of the board of directors, key managerial persons, and the partners of the corporate debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the liquidator.

V. The personnel of the corporate debtor are directed to extend all cooperation to the liquidator as required by him in managing the liquidation process of the corporate debtor.

VI. The liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and the same shall be paid to the liquidator from the proceeds of the liquidation estate under section 53 of the Code.

VII. This liquidation order shall be deemed to be notice of discharge to the officers, employees, and workmen of the corporate debtor except to the extent of the business of the corporate debtor continued during the liquidation process by the liquidator.

VIII. The registry is directed to communicate this order to the concerned Registrar of Companies, the registered office of the corporate debtor, and the liquidator by speed-post within one week from the date of this order, after completion of necessary formalities.

IX. Accordingly, IA/260(MP)2022 in CP(IB)/22(MP)2021 is disposed of.

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Kaushalendra Kumar Singh
Member (Technical)

Dr. Madan B. Gosavi
Member (Judicial)

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